Supreme Court, U.S.
FILED
DEC 1 1988
JOSEPH E. SPANIOL, JR.
CLERK

(8)

No. 87-1911

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *et al.*,
Petitioners,

v.

GUILFORD TRANSPORTATION INDUSTRIES, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

RESPONDENTS' SUPPLEMENTAL BRIEF

RALPH J. MOORE, JR.
(Counsel of Record)
D. EUGENIA LANGAN
SHEA & GARDNER
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 828-2000

CHARLES S. EINSIEDLER, JR.
PIERCE, ATWOOD, SCRIBNER,
ALLEN, SMITH & LANCASTER
One Monument Square
Portland, Maine 04101
(207) 773-6411

Counsel for Respondents

December 1, 1988

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

5 pp

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. 87-1911

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *et al.*,
Petitioners,

v.

GUILFORD TRANSPORTATION INDUSTRIES, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

RESPONDENTS' SUPPLEMENTAL BRIEF

This Supplemental Brief is being filed in response to the Fourth Supplemental Brief for Petitioners, which brought to the Court's attention the recent Seventh Circuit decision in *Burlington Northern R.R.* v. *United Transp. Union*, Nos. 88-2180 & 88-2181 (Nov. 18, 1988). The petitioner unions assert that *Burlington Northern*, which held that the parties to an ICC-approved transaction in that case are corporate "alter egos" for labor purposes, is in "square conflict" with the decision of the First Circuit in this case that § 11341(a) of the Interstate Commerce Act preempts the unions' attempt to ob-

tain a Railway Labor Act "status quo" injunction against ICC-approved leases of rail line to the Springfield Terminal Railroad by the other Guilford railroads—even though the unions have never contended that Springfield Terminal and the other railroads are "alter egos" and the questions presented in the petition for certiorari do not concern the "alter ego" doctrine that the Seventh Circuit relied upon. (Petition for Certiorari ["Pet."] at i-ii). The unions fail to acknowledge the precise holding of *Burlington Northern*, which we submit is not in conflict with the decision below and does not even address the questions presented here.

Burlington Northern involves a Railway Labor Act challenge to the Burlington Northern's avowed attempt to escape from its collective bargaining agreements by transferring certain operations to an affiliated carrier, the Winona Bridge Company, through an ICC-approved grant of trackage rights. While the Seventh Circuit sustained the unions' challenge, the court noted that its opinion did not "resolve" the Interstate Commerce Act preemption question. (Fourth Supp. Br. at App. 21a). The court found it "unnecessary to decide whether the RLA is superseded in part by the ICA," because it held "that Winona Bridge, as the alter ego of the Burlington, is bound by the existing collective bargaining agreements * * *," and thus that the lower court could fashion a remedy preserving those agreements without enjoining consummation of the transfer of trackage rights approved by the ICC. (*Id.* at 26a). Enforcement of the Railway Labor Act in that manner would not, in the Seventh Circuit's view, run afoul of § 11341(a), which exempts a carrier from obligations under other laws only "as necessary to let [the carrier] carry out the transaction * * * ." (*Id.* at 25a). Nor, for the same reason, would such an order constitute an impermissible colla-

teral attack on the ICC's order approving the transfer of trackage rights. (*Id.* at 28a).[1]

In this case, by contrast, the unions have never contended that Springfield Terminal is the "alter ego" of the other Guilford railroads,[2] and they have never argued that there is *any* basis upon which the lower courts could have prevented what the unions characterize as a change in working conditions as a result of the leases, *except* by enjoining the leases themselves. Instead, the unions explicitly sought an order "enjoining any further implementation of the leases and * * * requiring respondents to rescind the leases which they [have] previously implemented" (Pet. at 11; see also Complaint, Prayer ¶ 4), and thus the lower courts were obliged to decide whether the Interstate Commerce Act preempted the unions' Railway Labor Act claim.

In short, the Seventh Circuit did not decide the Interstate Commerce Act preemption questions presented here because it resolved the *Burlington Northern* case on an independent alternative ground not applicable in this case. There is *no* conflict between the Seventh and First Circuits on the questions presented in this case.

---

[1] The Seventh Circuit refused to follow the collateral attack holding in *Brotherhood of Loc. Engineers* v. *Boston & Maine Corp.*, 788 F.2d 794 (1st Cir. 1986), because it found "one crucial difference" between that case and *Burlington Northern*:

> "The parties to the [transaction] in *Boston & Maine* were in fact distinct entities whereas Burlington and Winona Bridge represent a singular interest. Consequently, the trackage rights agreement is not disturbed by requiring bargaining [before Winona departs from existing Burlington Northern agreements] after the ICC authorization." (Fourth Supp. Br. at App. 28a).

[2] Not all commonly-owned entitles are deemed alter egos for labor law purposes, of course. See, *e.g.*, *Alkire* v. *NLRB*, 716 F.2d 1014, 1021 & n.5 (4th Cir. 1983).

Respectfully submitted,

RALPH J. MOORE, JR.
(Counsel of Record)
D. EUGENIA LANGAN
SHEA & GARDNER
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 828-2000

CHARLES S. EINSIEDLER, JR.
PIERCE, ATWOOD, SCRIBNER,
ALLEN, SMITH & LANCASTER
One Monument Square
Portland, Maine 04101
(207) 773-6411

Counsel for Respondents

December 1, 1988